HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1219 OF 2006

Between:

Abdul Khader

..... Appellant

AND

The Forest Range Officer,
Luxettipet, Adilabad District & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri A. Sudarshan Reddy

Counsel for the respondents : Government Pleader for Forests

Dated: 17.11.2006

Per G.S.SINGHVI, CJ

Feeling dissatisfied with the order passed by the learned Single Judge whereby she allowed the writ petition filed by him and set aside order dated 21.08.2006 passed by Conservator of Forests, Adilabad (respondent No.4 herein) with a direction to the said respondent to pass appropriate order under Section 44 (2-D) of the Andhra Pradesh Forest Act, 1967 (for short 'the Act') within a period of two weeks from the date of receipt of Court's order, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The appellant claims to be the owner of vehicle bearing registration No.AP-1-T-3383. He is said to have given the vehicle on hire to one Sri Syed Jaffar Hussain for transportation of timber from Kagajnagar Government Timber Depot, Jagtial. On 25.04.2006, the appellant's vehicle was seized at the forest check-post of Gudem, Luxettipet Range on the ground that it was being used for transportation of prohibited forest produce. As a sequel to this, Sub-Divisional Forest Officer, Luxettipet-cum-Authorised Officer (respondent No.2) initiated proceedings under Section 44 (2-A) of the Act. He issued show cause notice to Syed Jaffer Hussain, Sk. Jaffar and the appellant to show cause as to why the vehicle and the timber may not be confiscated. In the course of enquiry, Syed Jaffar Hussain and others denied the charge of having committed forest offence. At the same time, Syed Jaffar Hussain also made a prayer for compounding the offence.

Respondent No.2 accepted the compounding statement given by Syed Jaffer Hussain and passed order dated 29-7-2006, the operative part of which reads as under:

> "I do hereby order that on the basis of compounding statement given by Syed Jaffar Hussain, it is ordered that the offence is compounded for Rs.82,000/- (Rupees Eighty two thousand only) and the number of 6 teak logs equivalent to 0.874 cmt involved in the offence case is confiscated to the State to release the 24 numbers teak logs as per the permit No.496005 of Book No.9921, dated 24-04-2006 and the Eicher van bearing No.AP 1T 3383 seized in the offence booked in POR No.42, book No.1, dated 25-04-2006."

The appellant challenged the aforementioned order in Writ Petition No.16546 of 2006. By an interim order dated 14.08.2006, the learned Single Judge directed the respondents to release the vehicle subject to furnishing of an undertaking that the same will not be alienated pending further orders. During the pendency of the writ petition, respondent No.4 invoked the power vested in him under Section 44(2-D) of the Act and set aside the order passed by respondent No.2, which was subject matter of challenge in the writ petition and directed him to conduct fresh enquiry and pass order after examining the witnesses of the case. Thereafter, the appellant amended the writ petition and made a prayer for quashing of order dated 21.08.2006.

The learned Single Judge noted that order dated 21.08.2006 was passed by respondent No.4 without giving action oriented notice and opportunity of hearing to the appellant and set aside the same with a direction to the said respondent to pass appropriate order after hearing the writ petitioner (appellant herein).

Shri A. Sudarshan Reddy, learned counsel for the appellant argued that order dated 21.08.2006 passed by respondent No.4 was nullity and the learned Single Judge gravely erred by remanding the matter to the officer concerned for fresh adjudication. He referred to the operative part of the order passed by respondent No.2 to emphasize that the vehicle of the appellant had not been confiscated under Section 44 (2-A) and argued in the absence of such an order, respondent No.4 could not have exercised power under Section
44 (2-D) of the Act and directed respondent No.2 to pass fresh order. Shri Reddy further argued that while remanding the case to respondent No.4, the learned Single Judge overlooked the plain language of Section 44 (2-D) and, therefore, the direction given by her to respondent No.4 to pass fresh order is liable to be set aside.

We have given serious thought to the arguments of
Shri Reddy, but have not felt persuaded to accept the same. Section 44(2-A) of the Act which confers power on the authorized officer to order confiscation of forest produce, tools, ropes, chains, boats or vehicles used for committing offence and sub-section (2-D) which confers power of suo motu revision on Conservator of Forests read as under:

> " 44 (2-A) Where an authorized officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

> 44 (2-D) An forest officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorized officer under sub-section (2-A) either suo motu or on application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit.
>
> Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard."

A careful reading of Section 44 (2-D) makes it clear that the Conservator of Forests can exercise power of suo motu revision either on his own or on an application made in that behalf. The only condition, which must be satisfied for exercise of the power of suo motu revision, is that there must exist an order of confiscation passed by the authorized officer under Section 44 (2-A) of the Act. The argument of Shri Reddy that order dated 29.07.2006 passed by the authorised officer was not for confiscation of the vehicle and, therefore, respondent No.4 could not have revised that order in its entirety sounds attractive in the first bluish, but on a careful and conjoint reading of Section 44 (2-A) and (2-D), we are unable to agree with him. Sub-section (2-D) does not speak of the confiscation of any particular type of produce or tools, ropes, chains, vehicles etc. It simply lays down that an officer not below the rank of the Conservator of Forests, upon whom power is conferred by the State Government, may, within 30 days of the order of confiscation passed by the authorized officer under Section 44 (2-A), revise that order either suo motu or on an application made in that behalf.

A perusal of order dated 29-7-2006 shows that respondent

No.2 had confiscated six teak logs qua which forest offence is said to have been committee, but released 24 teak logs with vehicle. To put it differently, the order passed by respondent No.2 was partially confiscatory. Therefore, respondent No.4 could have legitimately exercised power under Section 44 (2-D) and order dated 21-8-2006 passed by him cannot be declared as vitiated due to lack of jurisdiction.

As a sequel to the above, we hold that the learned Single Judge did not commit any error by remanding the case to respondent No.4 for fresh adjudication.

In the result, the appeal is dismissed. However, keeping in view the fact that long period has elapsed since the seizure of the vehicle along with forest produce, we direct that if respondent No.4 has so far not passed order in terms of the direction given by the learned Single Judge, then he shall do so within a period of seven days from today after giving opportunity of hearing to the appellant.

Learned Government Pleader for Forests is directed to telephonically communicate this direction to the Conservator of Forests so that he may comply with the same without fail. If respondent No.4 fails to pass appropriate order, the appellant shall be free to file miscellaneous petition for further direction.

As a sequel to dismissal of the appeal, W.A.M.P.No.2530 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

17.11.2006
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